

**KENT STATE UNIVERSITY
AMENDED AND RESTATED AFFINITY AGREEMENT**

This Agreement is entered into as of this 1st day of January, 2008 (the "Effective Date") by and between FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.), a national banking association having its principal place of business in Wilmington, Delaware ("Bank"), and Kent State University, an educational institution having its principal place of business in Kent, Ohio ("KSU"), for themselves, and their respective successors and assigns.

WHEREAS, Kent State University Alumni Association ("KSUAA") and Bank are parties to that certain Agreement dated July 28, 1997, as the same has been amended ("Original Agreement"), wherein Bank provides certain Financial Service Products to certain persons included in certain lists provided to Bank by or on behalf of KSU;

WHEREAS, KSUAA assigned the Original Agreement to KSU in an Addendum to the Original Agreement dated January 30, 2003; and,

WHEREAS, KSU and Bank mutually desire to amend and restate the Original Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, KSU and Bank agree as follows:

1. **DEFINITIONS**

When used in this Agreement, the following initially capitalized words and phrases will have the meanings ascribed to them as set forth below:

"Agreement" means this agreement and Schedules A and B and Attachment #1.

"CD Deposits" means those deposits in the certificate of deposit accounts opened by Members in response to marketing efforts made pursuant to the Program.

"Credit Card Account" means a credit card account opened in response to marketing efforts made pursuant to the Program. A **"Student Customer Credit Card Account"** is a Credit Card Account where the primary applicant is a Student Customer. An **"Alumni Customer Credit Card Account"** is a Credit Card Account where the primary applicant is an Alumni Customer.

"Customer" means any Member who is a participant in the Program.

- (i) **"Student Customer"** means a Customer who is identified by KSU or the Customer as an undergraduate student of KSU.
- (ii) **"Alumni Customer"** means a Customer who is not a Student Customer.

"Emerging Credit Card Account" means a Credit Card Account coded by Bank with one of Bank's risk management identifiers.

"Emerging Credit Card GIP Account" means an Emerging Credit Card Account opened pursuant to a GIP in which KSU complies with the GIP provisions of the Agreement.

"Emerging Credit Card Reward Account" means an Emerging Credit Card Account carrying the Reward Enhancement and opened pursuant to the Program.

"Emerging Credit Card Reward GIP Account" means an Emerging Credit Card Reward Account opened pursuant to a GIP in which KSU complies with the GIP

"Financial Service Product" means any credit card program, charge card program, debit card program, installment loan program, revolving loan program, long distance calling card program which carry a credit feature, deposit program and travel and entertainment card program.

"GIP Account" means a consumer Credit Card Account opened pursuant to a GIP in which KSU complies with the GIP provisions of this Agreement.

"Group Incentive Program" or **"GIP"** means any marketing or other program whereby KSU conducts and funds solicitation efforts for the Program, and the parties mutually agree that such marketing or other program will constitute a GIP.

"Information" has the meaning ascribed to such word in Section 7.

"KSU Affiliate" means any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with KSU.

"Mailing List" means an updated and current list and/or magnetic tape (in a format designated by Bank) containing non-duplicate names, with corresponding valid postal addresses and, when available, telephone numbers (including area codes) and e-mail addresses of all Members who are at least eighteen (18) years of age, segmented by zip codes or reasonably selected membership characteristics.

"Member" means undergraduate students, graduate students, alumni of KSUAA and/or other potential participants mutually agreed to by KSU and Bank.

"MMDA Deposits" means those deposits in the money market deposit accounts opened by Members in response to marketing efforts made pursuant to the Program.

"Program" means those programs and services of the Financial Service Products Bank agrees to offer pursuant to this Agreement to the Members from time to time.

"Reward Credit Card Account" means a consumer Credit Card Account carrying the Reward Enhancement and opened pursuant to the Program.

"Reward Enhancement" means the loyalty reward consumer Credit Card Account enhancement as provided through Bank and offered as part of the Program for Reward Credit Card Accounts and Emerging Credit Card Reward Accounts. The Reward Enhancement may be marketed under another name (*e.g.*, World Points), as determined by Bank from time to time, in its sole discretion.

"Reward GIP Account" means a consumer Reward Credit Card Account opened pursuant to a GIP in which KSU complies with the GIP provisions of the Agreement.

"Royalties" means the compensation set forth in Schedule A.

"Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by KSU or any KSU Affiliate during the term of this Agreement.

2. RIGHTS AND RESPONSIBILITIES OF KSU

- (a) KSU agrees that during the term of this Agreement it will endorse the Program exclusively and that neither KSU nor any KSU Affiliate will, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than Bank) the providing of, any Financial Service Products of any organization other than Bank; (ii) license or allow others to license or use the Trademarks in relation to or for promoting any Financial Service Products of any entity other than Bank; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than Bank. Notwithstanding anything else in this Agreement to the contrary, KSU may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by KSU of said financial institution or advertising for a Financial Service Product.
- (b) KSU agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program.
- (c) KSU authorizes Bank to solicit Members by mail, direct promotion, internet, advertisements and/or telephone for participation in the Program.
- (d) KSU will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank, which contains a Trademark; such approval will not be unreasonably withheld or delayed. In the event that Bank incurs a cost because of a change in the Trademarks (*e.g.*, the cost of reissuing new credit cards), Bank may deduct

such costs from Royalties due KSU. In the event such costs exceed Royalties then due KSU, KSU will promptly reimburse Bank for all such costs.

- (e) Within thirty (30) days following the request of Bank, but not more than once per quarter KSU will provide Bank with the Mailing List free of any charge; provided, however, that KSU will not include in any Mailing List the name and/or related information regarding any person who has expressly requested that KSU not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by KSU or its agents for an initial Mailing List or an update to that list, Bank may deduct such costs from Royalties due KSU. KSU will provide the first Mailing List, containing at least one hundred forty thousand (140,000) non-duplicate names with all corresponding information, as soon as possible but no later than thirty (30) days after KSU's execution of this Agreement.
- (f) KSU will, and will cause any KSU Affiliates to, only provide information to or otherwise communicate with Members or potential Members about the Program with Bank's prior written approval, except for current advertising and solicitation materials provided by Bank to KSU. Notwithstanding the above, KSU may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are accurate and consistent with the then-current materials provided by Bank to KSU. Any correspondence received by KSU that is intended for Bank (e.g., applications, payments, billing inquiries, etc.) will be forwarded to the Bank account executive via overnight courier within twenty-four (24) hours of receipt. All charges incurred for this service will be paid by Bank.
- (g) KSU hereby grants Bank and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license will be transferred upon assignment of this Agreement. This license will remain in effect for the duration of this Agreement and will apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. KSU will provide Bank all Trademark production materials (e.g., camera ready art) required by Bank for the Program, as soon as possible but no later than thirty (30) days after KSU's execution of this Agreement. Nothing stated in this Agreement prohibits KSU from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.
- (h) KSU will permit Bank to advertise the Program on its home page and at other prominent locations within the internet site(s) of KSU free of any charge. Bank may establish a "hot-link" from such advertisements to another internet site to enable a person to apply for a Credit Card Account. Any Credit Card Accounts generated pursuant to such a "hot-link" will entitle KSU to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. KSU will modify or remove such advertisements within twenty-four (24) hours of Bank's request. KSU will provide Bank

with the ability to access any and all pages within the KSU internet site(s), including without limitation any "members only" or other restricted access pages.

- (i) KSU provide to Bank the promotional opportunities listed on Attachment #1, attached hereto and incorporated herein by reference, free of charge during each consecutive twelve month period during the term of this Agreement (each an "Annual Marketing Plan"). The parties agree that each obligation to provide each item of each Annual Marketing Plan is a material obligation of KSU to Bank.

3. RIGHTS AND RESPONSIBILITIES OF BANK

- (a) Bank will design, develop, maintain, and administer the Program for the Members.
- (b) Bank will design all advertising, solicitation, and promotional materials with regard to the Program. Bank reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of KSU.
- (c) Bank will bear all costs of producing and mailing materials for the Program.
- (d) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of KSU.
- (e) Bank will use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and will not permit those entities handling these Mailing Lists to use them for any other purpose. Bank will have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and will remain the sole property of KSU. However, Bank may maintain separately all information that it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of Bank's own files and will not be subject to this Agreement; provided however that Bank will not use this separate information in a manner that would imply an endorsement by KSU.
- (f) KSU shall have the right to include statement messages and/or to include in Program billing statements materials developed by KSU at its expense, subject to the prior approval of Bank as to the scope, timing and content thereof, and subject to Bank's size, scheduling and weight requirements. Such approval from Bank shall not be unreasonably withheld. The parties acknowledge and agree that such materials may include promotions of various KSU and current KSU-endorsed products or services (other than any Card Product or any credit card, deposit or other bank product), and/or such other materials as may be mutually agreed upon by the parties. Bank shall not include in any Program billing statement mailing any materials without the prior approval of KSU (such approval shall not be unreasonably withheld), other than the billing statements themselves and other such notices, messages or materials as Bank reasonably determines in its discretion are either: (1) required by applicable law, regulation or governmental

regulatory authorities; (2) in the nature of Credit Card Account activation/loyalty marketing pieces; or (3) otherwise necessary or appropriate to the prudent conduct/maintenance of the Credit Card Account and/or the Customer relationship. KSU agrees to indemnify and hold harmless Bank from and against any and all claims, causes of action, losses, costs or damages incurred or suffered by Bank (including reasonable attorneys' fees) arising from the material inserted into the billing statements by KSU, including without limitation, the content thereof, or from the products and services offered therein.

- (g) Subject to applicable law and regulation, Bank has the right to place Trademarks on gifts for individuals completing applications and on other premium items, including without limitation t-shirts, hats, "bobbleheads," or other items suitable in Bank's judgment for the solicitation of Credit Card Account applications. KSU will have final approval of the use and appearance of the Trademarks used on such materials, but hereby grants Bank the right to use such approved materials at Bank's discretion. Bank will not be required to pay amounts to any third party (e.g., any producer, licensor(ee) or manufacturer of such gifts and premiums) as royalties or other compensation otherwise due directly or indirectly to or on behalf of KSU or an KSU Affiliate for such gifts or premiums. KSU agrees to waive such payments from any such third party(ies) (and/or to cause the usual recipient(s) of such payments to waive such payments), and to execute and deliver (and/or to cause the usual recipient(s) of such payments to execute and deliver) to Bank such additional documentation as may be necessary or appropriate to give effect to this waiver. If a third party should refuse to give effect to KSU's waiver by reducing the price to Bank for such gifts or premiums by the applicable amount (or any person will otherwise prevent the realization of this benefit by Bank), then Bank is entitled to deduct such applicable amount(s) from all Royalties and/or Advance payments otherwise due KSU.
- (h) Bank will continue to its practice of including in all advertising and solicitation materials language which states that purchases made using a Credit Card Account will help support various KSU student and alumni programs and initiatives ("Contribution Language"), and KSU shall have prior approval of such Contribution Language pursuant to Section 2(d) of this Agreement.

4. REPRESENTATIONS AND WARRANTIES

- (a) KSU and Bank each represents and warrants to the other that as of the Effective Date and throughout the term of this Agreement:
 - (i) It is duly organized, validly existing and in good standing.
 - (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

- (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.
 - (iv) No consent, approval, or authorization from any third party is required in connection with the negotiation, execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.
 - (v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.
- (b) KSU represents and warrants to Bank as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to Bank for use as contemplated by this Agreement, and to provide the Mailing List(s) to Bank for the promotion of the Program. KSU will hold Bank, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse Bank's reasonable and actual costs in connection therewith (including attorneys' fees), arising from the Trademark license granted herein or from Bank's use of the Trademarks in reliance thereon, or from the use of any Mailing List(s) by Bank for the promotion of the Program. Each party will promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.
- (c) KSU represents and warrants to Bank that throughout the term of this Agreement that there is no entity or organization (including KSUAA) that can use, license or sub-license the Trademarks in connection with any Financial Service Products, that has access to the Mailing List in connection with any Financial Service Products or that can grant marketing access to any KSU athletic event in connection with any Financial Service Products.

5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to KSU. Royalties will not be paid without a completed Schedule B (W-9 Form and ACH Form). Except as otherwise provided in Schedule A, payment of Royalties then due will be made approximately forty-five (45) days after the end of each calendar quarter.
- (b) On or before the forty-fifth (45th) day after the end of each calendar quarter during the term of this Agreement, Bank will provide KSU with a statement showing (i) the number of consumer Credit Card Accounts opened, the number of consumer Credit Card Accounts renewed and retail purchase transaction dollar volume (excluding those

transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar quarter on consumer Credit Card Accounts.

6. PROGRAM ADJUSTMENTS

Bank reserves the right to make periodic adjustments to the Program and its terms and features. In addition, Customers may be offered opportunities to select credit protection as a benefit under the Program and other services.

7. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("**Information**") are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. Bank and KSU will be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner and (ii) as required by law or requested by any governmental regulatory authority.

8. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end on December 31, 2012. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) and not more than one hundred eighty (180) days, prior to the end of the then current term or renewal term, as applicable.

9. TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or KSU, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice will (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement will terminate sixty (60) days after the Cure Period.
- (b) If either Bank or KSU becomes insolvent in that its liabilities exceed its assets or it is unable to meet or it has ceased paying its obligations as they generally become due, or it is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.

- (c) Upon the expiration or earlier termination of this Agreement, Bank will, in a manner consistent with Section 9(d) of this Agreement, cease to use the Trademarks. Notwithstanding the foregoing, Bank may continue to use the Trademarks for a period of ninety (90) days following the date of termination of the Agreement to wind down the Program. Bank agrees that with respect to the period following the expiration or earlier termination of this Agreement, it will not claim any right, title, or interest in or to the Trademarks or to the Mailing Lists. However, Bank may conclude all solicitation that is required by law.
- (d) Bank will have the right to prior review and approval of any notice in connection with, relating or referring to the expiration or earlier termination of this Agreement to be communicated by KSU or any KSU Affiliate to the Members. Such approval will not be unreasonably withheld. Upon the expiration or earlier termination of this Agreement, KSU will not attempt to cause the removal of KSU's identification or Trademarks from any person's credit devices, or other account access devices, checks, statements or records of any Customer existing as of the effective date of expiration or earlier termination of this Agreement.
- (e) In the event that any material change in any applicable law, statute, operating rule or regulation, or any material change in any operating rule or regulation of VISA, MasterCard or American Express makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then Bank will have the right to terminate this Agreement upon ninety (90) days advance written notice. Such written notice will include an explanation and evidence of the burden imposed as a result of such change.
- (f) For a one (1) year period immediately following the expiration or earlier termination of this Agreement for any reason, KSU agrees that neither KSU nor any KSU Affiliate will, by itself or in conjunction with others, directly or indirectly, specifically target any offer of a credit or charge card, or a credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, KSU may, after the expiration or earlier termination of this Agreement, offer persons who were Customers the opportunity to participate in another credit or charge card program, endorsed by KSU provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Members and provided further no such persons are directly or indirectly identified as a customer of Bank, or offered any terms or incentives different from that offered to all Members.

10. CUSTOMER LIST

- (a) Each year during the term of the Agreement (provided that notice of a party's intention to termination the Agreement has not been given), Bank shall provide KSU with a list of information (e.g., names and addresses) about Customers as may be mutually agreed upon by the parties (hereinafter the "Customer List"). When used in this Agreement, the

term "Customer List" includes any whole or partial copies or compilations of a Customer List in any form or any medium, any information derived solely from a Customer List, and all Customer Information, as hereinafter defined. Notwithstanding any provision of the Agreement, Bank shall not provide any Customer List or Customer Information otherwise required to be provided by it to KSU, and may restrict any use by KSU of any Customer List or Customer Information which is provided by Bank to KSU, if Bank is prohibited from disclosing the same or permitting such use because of any law, regulation, bankwide privacy policy, public privacy pledge, court order, rule, consent decree, or individual present or former Customer request, or if the provision of such information or its intended use would create an additional regulatory compliance burden on Bank.

- (b) KSU shall return to Bank each Customer List, in the same form as received by KSU within thirty (30) days of receipt of such Customer List. KSU agrees that as soon as KSU is no longer providing the Customers with the enhancements that requires KSU to receive the Customer List or providing such enhancements as required by the Agreement, KSU shall: (i) immediately destroy and purge from all its systems all information within each Customer List to the extent that such information in any way relates to Bank, the Program or Credit Card Accounts ("Customer Information"); and (ii) return or destroy within thirty (30) days all Customer Information that is in tangible form, including any and all full or partial copies, or reproductions thereof in any medium whatsoever. All destruction of Customer Lists shall be done in strict accordance with Bank's then current destruction policy.
- (c) Any Customer List provided to KSU may contain "dummy" information (*e.g.*, names, account information, addresses, *etc.*) so that unauthorized use of a Customer List may be determined. This information will be unknown to KSU. A violation of this Agreement is conclusively proven and the damages named hereinafter shall be deemed owed when Bank establishes the following:
 - (i) that Bank placed "dummy" information on the list (*e.g.*, name(s), account information, address(es), *etc.*);
 - (ii) that the "dummy" information received any mailings which were sent or generated outside the scope of the permitted use of the Customer List; and
 - (iii) that identical "dummy" information was not provided by Bank or its affiliates to any third party.
- (d) All Customer Lists are (i) confidential and proprietary and (ii) shall remain the sole property of Bank. KSU expressly acknowledges and agrees that KSU has no property right or interest whatsoever in any Customer List. KSU shall hold all Customer Lists in strict and absolute confidence and shall not provide, trade, give away, barter, lend, send, sell or otherwise disclose (collectively "transfer") any Customer List and shall not make any copies of a Customer List of any type whatsoever except as expressly approved in a separate writing by Bank. At all times KSU shall keep in confidence and trust all Customer Lists. KSU further agrees that it shall not transfer any Customer List to any

other organization or individual under any circumstances, and KSU specifically but not by way of limitation agrees that no subcontractors and/or affiliates shall be transferred any Customer List unless agreed to in writing by Bank prior to any such transfer. (This paragraph would prohibit, by means of example only, transferring any list of Bank cardholders to any financial institution during the term of the Agreement or after the termination of the Agreement.)

- (e) KSU shall have no authority to use the Customer List for any purpose not expressly permitted by Bank in a separate writing. KSU shall comply with any reasonable request of Bank with respect to security precautions to maintain the security of the Customer List. KSU agrees to secure and safeguard the Customer List in strict accordance with the requirements of this Section and Bank's instructions, as communicated by Bank to KSU from time to time. KSU shall only permit access to the Customer List to those employees, volunteers, agents and/or representatives of KSU who need such access to perform their duties for KSU. In view of the confidential nature of the Customer List, KSU warrants that KSU and all its employees, volunteers, agents and/or representatives who work with any Customer List shall be made aware of the obligations contained in this Section and shall be under strict legal obligation not to copy any Customer List, transfer any Customer List or make any other use of any Customer List other than as specifically approved by this Section.
- (f) Because the nature of the Customer List makes an evaluation of damages after a violation of this Agreement impossible, then in the event that any Customer List is handled or used in a fashion that violates this Agreement by KSU or its employees, volunteers, agents, and/or representatives, Bank will be entitled to damages of twenty dollars (\$20.00) for each use of each category of information (*e.g.*, names, addresses, *etc.*) used in violation of this Agreement, with the amount of damages not to exceed one hundred fifty thousand dollars (\$150,000.00) per breach. In addition, KSU agrees that Bank shall be entitled to injunctive relief to prevent violation or further violation by KSU and/or its employees, volunteers, agents or representatives of this Agreement. Nothing herein shall be construed as prohibiting Bank from pursuing any other remedy on account of such breach or threatened breach.
- (g) In the event KSU receives a request to disclose a Customer List pursuant to a subpoena, order of court of competent jurisdiction or by judicial or administrative agency or legislative body or committee, KSU agrees to: (i) immediately notify Bank of the existence, terms and circumstances surrounding such request; (ii) consult with Bank on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such Customer List is required or deemed advisable, exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Customer List to be disclosed which Bank designates.

11. GROUP INCENTIVE PROGRAM

- (a) Bank will design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by KSU pursuant to any GIP. In that regard, KSU will give Bank sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle KSU to the Royalty specified in Schedule A, subject to the other terms and conditions of this Agreement.
- (b) All marketing materials generated as a result of such GIP programs will be coded by KSU as instructed by Bank for tracking purposes. Marketing materials or telemarketing inquiries from Members which, in either case, do not contain or reference such coding will not be considered eligible for any of the GIP Royalty as set forth in Schedule A.
- (c) In addition to all other rights it may have under this Agreement, Bank will have the right of prior approval of all advertising and solicitation materials distributed by KSU pursuant to any GIP. Bank will have approval and control of the scope, timing, content and continuation of any GIP.
- (d) All costs incurred by Bank in producing and mailing materials created pursuant to any GIP or of supporting the marketing efforts of KSU pursuant to any GIP will be deducted from any or all Royalty payments due KSU under this Agreement.
- (e) KSU will comply with Bank's instructions and all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with regard to any GIP.

12. MISCELLANEOUS

- (a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.
- (b) The obligations in Sections 4(b), 7, 9(c), 9(d), 9(f), 10(b) through (g), and 11(e) will survive the expiration or any earlier termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement will not be deemed a waiver of such right or any other rights.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement will for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability will not affect the remainder of this Agreement which will

survive and be construed as if such invalid or unenforceable part had not been contained herein.

- (f) All notices relating to this Agreement will be in writing and will be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices will be addressed as follows:

- (1) If to KSU:

Kent State University
Williamson Alumni Center
1100 East Main Street
Kent, Ohio 44242

ATTENTION: Lori Randorf
Executive Director of Alumni Relations
Fax #: (222) 222-2222

- (2) If to FIA Card Services, N.A.:

FIA Card Services, N. A.
1100 North King Street
Wilmington, Delaware 19884

ATTENTION: Lou Zicarelli
Card Group Sr. Sales Executive
Fax #: (302) 432-0469

- (3) Any party may change the address and fax number to which communications are to be sent by giving notice, as provided herein, of such change of address.
- (g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein, including, without limitation, the Original Agreement. Bank may utilize the services of any third party in fulfilling its obligations under this Agreement. Certain Financial Service Products or services under this Agreement may be offered through Bank's affiliates.
- (h) Bank and KSU are not agents, representatives or employees of each other and neither party will have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

- (i) Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person other than KSU and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Neither party will be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes or other labor disputes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or any event beyond its reasonable control or without its fault or negligence.
- (k) This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties, by its representative, has executed this Agreement as of the Effective Date.

Kent State University

By: David K. Creamer

Name: David K. Creamer

Title: Senior Vice President
for Administration

Date: April 22, 2008

FIA Card Services, N.A.

By: [Signature]

Name: David Boora

Title: SVP

Date: 5.14.08

04/21/08 [Signature] 04-22-08

SCHEDULE A

ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay KSU a Royalty calculated as follows, for those accounts with active charging privileges. Bank may create a special class of consumer accounts for KSU employees under the Program, and will not pay compensation for such designated accounts. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

A. CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each new consumer Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the consumer Credit Card Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.
2. \$1.00 (one dollar) for each consumer Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each consumer Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that consumer Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (fifty basis points) of all retail purchase transaction dollar volume generated by Customers using an Alumni Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. 0.40% (forty basis points) of all retail purchase transaction dollar volume generated by Customers using a Student Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
5. \$75.00 (seventy-five dollars) for each GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the GIP Account's opening for at

least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.

B. REWARD CREDIT CARD ACCOUNTS

Reward Credit Card Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Reward Credit Card Accounts.

1. \$1.00 (one dollar) for each new Reward Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward Credit Card Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Reward Credit Card Account.
2. \$1.00 (one dollar) for each Reward Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Reward Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Reward Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months. A Reward Credit Card Account may renew every twelve months after the opening of the account.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using a consumer Reward Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$75.00 (seventy-five dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

C. EMERGING CREDIT CARD ACCOUNTS

Emerging Credit Card Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Emerging Credit Card Accounts.

1. \$1.00 (one dollar) for each new Emerging Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Emerging Credit Card Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.
2. \$1.00 (one dollar) for each Emerging Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Emerging Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Emerging Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using an Emerging Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$25.00 (twenty-five dollars) for each Emerging Credit Card GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Emerging Credit Card GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Emerging Credit Card GIP Accounts will not qualify for any other opening-of-an-account Royalty.

D. EMERGING CREDIT CARD REWARD ACCOUNTS

Emerging Credit Card Reward Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Emerging Credit Card Reward Accounts.

1. \$1.00 (one dollar) for each new Emerging Credit Card Reward Account opened, which remains open for at least ninety (90) consecutive days and which is utilized

by the Customer within the first ninety (90) consecutive days of the Emerging Credit Card Reward Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any Emerging Credit Card Account which, after opening, converts to an Emerging Credit Card Reward Account, or for any Emerging Credit Card Reward GIP Account.

2. \$1.00 (one dollar) for each Emerging Credit Card Reward Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Emerging Credit Card Reward Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Emerging Credit Reward Account; and 2) has had active charging privileges for each of the preceding twelve months. An Emerging Credit Card Reward Account may renew every twelve months after the opening of the account.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using an Emerging Credit Card Reward Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$25.00 (twenty-five dollars) for each Emerging Credit Card Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Emerging Credit Card Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Emerging Credit Card Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

E. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each new consumer Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that the Customer pays the annual fee on a Gold Reserve Account.

F. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each new consumer Gold Option Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Option Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that each Gold Option Account remains open.

G. DEPOSIT ACCOUNTS

1. 0.05% (five one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.004167%) of the average MMDA Deposits.
2. 0.05% (five one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.004167%) of the average CD Deposits.

H. ROYALTY ADVANCES

1. Within forty-five (45) days of the full execution of this Agreement, Bank shall pay to KSU the sum of two hundred ten thousand dollars (\$210,000) and within forty-five (45) days of each of January 1, 2009, January 1, 2010, January 1, 2011, and January 1, 2012, Bank shall pay to KSU the sum of one hundred thirty-five thousand dollars (\$135,000) (each, an "Advance"), as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to KSU, be applied against the Advance until such time as the Advance is fully recouped. Any Royalties accrued thereafter shall be paid to KSU as set forth in this Agreement. Notwithstanding the foregoing, (x) Bank shall no longer be obligated to pay any additional Advances to KSU hereunder, and (y) KSU hereby promises to pay Bank upon demand an amount equal to the difference between the total amount of the Advance(s) paid by Bank and the total amount of accrued Royalties credited by Bank against such Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (v) below should occur:
 - (i) This Agreement is terminated prior to December 31, 2012;
 - (ii) KSU breaches any of its obligations under this Agreement;

- (iii) Bank is prohibited or otherwise prevented from conducting at least five (5) direct mail campaigns to the full updated Mailing List during each consecutive twelve (12) month period during the term of this Agreement;
 - (iv) Bank is prohibited or otherwise prevented from conducting at least five (5) telemarketing campaigns to the full updated Mailing List during each consecutive twelve (12) month period during the term of this Agreement; and
 - (v) Bank is prohibited from conducting on-campus promotion campaigns (e.g., tabling and postering) at major events (excluding ceremonial/award events including, but not limited to, commencement, convocation, inaugurations and PASS) during each consecutive twelve (12) month period during the term of this Agreement.
2. If during any given year(s) during the term of this Agreement KSU recoups all prior Advances paid by it to Bank in prior years, and pays Bank Royalties accrued by KSU over and above the Royalties used by Bank to recoup such prior Advances (the "Paid Out Royalties"), then Bank may reduce the amount of any subsequent Advance(s) due by the amount of any such Paid Out Royalties.
3. Ten thousand dollars (\$10,000) of each annual Advance set forth in Section G.1, above, shall be reserved by KSU for mutually agreed upon events/efforts that KSU proposes to Bank.

I. ROYALTY GUARANTEE

KSU shall be guaranteed to accrue Royalties (including without limitation the amount of the Advances) equal to or greater than seven hundred fifty thousand dollars (\$750,000) (the "Guarantee Amount") by December 31, 2012, subject to the provisions set forth below. If on December 31, 2012, KSU has not accrued \$750,000 in Royalties, Bank will pay KSU an amount equal to the Guarantee Amount minus the sum of all compensation accrued by KSU during the term of this Agreement and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection H.1., above.

J. ANNUAL OUTSTANDINGS BONUS

Each year during the term of this Agreement and subject to the conditions below, Bank shall pay to KSU the sum of twenty-five thousand dollars (\$25,000) ("Annual Outstandings Bonus") if there is an incremental increase of five percent (5%) or more in the total credit card account outstanding balances (the "Total Outstanding Balances") on December 31 of the current year when compared to the Total Outstanding Balances on December 31 of the immediately preceding year. No Annual Outstandings Bonus shall

be paid in any year in which the Total Outstanding Balances on December 31 of the current year have not increased by five percent (5%) or more over the Total Outstanding Balances of the immediately preceding December 31. The Annual Outstandings Bonus shall be paid within forty-five (45) days of each annual anniversary of the Effective Date of this Agreement beginning in 2009. Notwithstanding the foregoing, this Annual Outstandings Bonus and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection G.1., above.

ATTACHMENT #1

PROMOTIONAL OPPORTUNITIES

In accordance with Section 2(i) of this Agreement, KSU shall provide the following to Bank at no additional cost:

- (a) Necessary access, during each year of this Agreement, for Bank to conduct direct promotion events for the Program at all KSU athletic events. Access to KSU athletics events is contingent upon Bank, or its agents complying with set-up requirements as determined by the Kent State University Athletic Department. If Bank does not comply with the requirements, it can be denied access to the specific athletic venue where compliance infractions occurred. Access can only be assured to events taking place on Kent State University campuses.
- (b) When conducting direct promotion events, Bank may have as many as four (4) direct promotion locations (each a "Location") within the athletic facility holding the game or athletic event. The Locations shall be at prominent locations and will be mutually agreed upon by KSU and Bank.
- (c) Credentials to all Bank employees and agents that are conducting the direct promotion campaign if they become necessary for access to the athletic facility holding the game or athletic event.
- (d) Four (4) parking permits/passes for each game at which Bank will be conducting direct promotion events, if they become necessary in the future.
- (e) Reasonable vehicular access to the athletic facility in which Bank will be conducting direct promotion events. Such vehicular access shall, to the extent possible, provide Bank vehicle a convenient position, in relation to each Location, before and after the event to unload/load.
- (f) Bank shall be permitted to set up each Location at least one (1) hour prior to the gates opening for the athletic event.
- (g) Any issues concerning direct promotion events not specifically mentioned in this Agreement will be mutually agreed upon by Bank and KSU and both parties agree to be reasonable.
- (h) Bank has the right to place Trademarks on gifts for individuals completing applications and on other premium items.